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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/564,134	05/28/96	KREISCHER	1 40-11313
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15M1/0210			
ROBBINS BERLINER AND CARSON 201 N FIGUEROA STREET 5TH FLOOR LOS ANGELES CA 90012			
			ART UNIT
			PAPER NUMBER
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			DATE MAILED: 02/10/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three (3) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-6 is/are rejected.
- ☒ Claim(s) 7-12 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

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1. The preliminary amendment received 28 May 1996 has been entered in full. Claims 1-12 are currently pending and under examination.

2. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119 and 371, which papers have been placed of record in the file.

3. The drawings are objected to for the reasons indicated on the attached form PTO-948. New, corrected drawings will be required at the appropriate time.

4. The Abstract of the Disclosure is objected to because it is not limited to a single paragraph as per M.P.E.P. § 608.01(b). Correction is required.

5. Claims 7 and 10 [and claims dependent thereon] are objected to under 37 CFR 1.75(c) as being in improper multiple dependent form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. Claim 7 calls for a multilayer polymer film "according to Claims 1 through 6," which language is equivalent to the "according to claims 1 - 6" wording prohibited by MPEP

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608.01(n)A. Claim 10 depends alternatively from multiple dependent claim 7. Accordingly, claims 7-12 have not been further treated on the merits.

6. Claims 1-6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 1 recites the limitation "the ... outer layers". There is insufficient antecedent basis for this limitation in the claim.

(B) Claim 1 further recites the parenthetical expressions "(SEBS)", "(SEB)", "(SEPS)", "(SBS)" and "(SIS)". Claim 1 is indefinite as to how said expressions provide a limitation to the claim. If nothing more than abbreviations of chemical names previously set forth in claim 1, they are mere surplusage to the claim and should be deleted. As presently drafted, the presence of these expressions creates confusion as to the scope of the claim.

(C) Claim 4 is indefinite in that the recitation "may also have" is ambiguous and raises the question: is the presence of a processing aid a prerequisite to infringement of the claim? The

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use of definite language such as "contains" a processing aid, is suggested to obviate this aspect of the rejection.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103(a).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-5 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP 0 345 774 A1 ("EP '774").

EP '774 discloses a multilayer heat-sealable polymer film for fabricating a thermoplastic container to accommodate, inter alia, medical and pharmaceutical substances, the film being formed from a mixture of at least two polyolefin resins. Heat-sealing of the film layer is indicated to occur at two or more locations under different conditions such that at least one hermetic seal and at least one seal having easy-to-peel openability are formed to define plural compartments isolated from one another (p. 3, line 56 to p. 4, line 1; p. 4, lines 6-10 and 17-30). Preference is expressed for forming the hermetic seal at a heat seal temperature higher than the corresponding temperature at which the seal having easy-to-peel openability is formed (p. 5, lines 1-7). This is seen to satisfy the claim 1 requirement for forming a peelable bond at a

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first sealing temperature and a permanent bond at a second higher sealing temperature. As to the "matrix phase polymer system" limitation, EP '774 describes and exemplifies multi-layer sheet formed by melting and mixing resins of different miscibilities and forming the resultant mixture into sheets whose surfaces have areas of different heat-sealability (p. 4, lines 51+ and p. 5, lines 33+). See especially Example 3, wherein a multi-layer blown film having as an inner layer a mixture of linear low-density polyethylene and polypropylene in specified proportions is used as the heat sealing layer. Polypropylene homopolymer is a species of applicants' matrix polymer as set forth in claim 1. Likewise, linear low-density polyethylene, being in fact a polymer of ethylene with minor amounts of higher 1-olefin comonomer, qualifies as the ethylene/alpha-olefin copolymer species of applicants' phase polymer (claim 1, final line). In addition, said inner layer is seen to correspond to one of the "outer layers" of claim 1 in the sense of being an exterior laminae of the flat multi-layer sheet formed in Example 3.

As such, EP '774 is considered to disclose a multilayer polymer film substantially as claimed herein, and any additional or particular claim parameters which may not be explicitly set out in the reference are considered to be inherent in the reference film

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or article or not to involve anything unobvious absent a showing to the contrary.

11. Claim 6 is rejected under 35 U.S.C. § 103(a) as unpatentable over EP 0 345 774 A1 ("EP '774") in view of EP 0 513 364 A1 ("EP '364").

EP '774 is applied as in the preceding rejection. EP '774 differs from claim 6 only in that a multilayer film having a gas barrier for oxygen and carbon dioxide and a water vapor barrier layer is not explicitly disclosed. However, the desirability of providing such barrier layers to cover the upper-container portion of a multi-chamber vessel which, like the primary art container, is intended for use in medical applications, is specifically taught by EP '364 (see, e.g., p. 5, lines 34-37 and 49-50 and p. 7, lines 8-14).

Accordingly, one having ordinary skill in the art, seeking to store medicaments or drugs that are hygroscopic and/or susceptible to oxidation in the container of EP '774, would have been led to modify the construction thereof through use of a cover of gas and water-vapor barrier layers as taught by EP '364, with a reasonable expectation of improving the stability and shelf life of such preparations. Thus the subject matter of claim 6, including the

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provision of a gas barrier for oxygen and carbon dioxide and a water vapor barrier layer, would have been prima facie obvious within the meaning of § 103(a).

12. Claims 1-6 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP 0 380 145 A1 ("EP '145").

EP '145 discloses a multilayer film having at least two layers and wherein one of the layers is formed from a polymeric blend of polypropylene polymer and a copolymer of ethylene and propylene or 1-butene and an elastomeric component such as SBS copolymer or SEBS copolymer. The elastomeric component may be present in an amount as high as 40 weight percent, per claim 5 hereof. See in particular p. 2, lines 10-37; p. 3, lines 19-29 and p. 7, claims 9 and 11 of the reference. In applicants' claimed film, the phase polymer, which may be a SBS or SEBS block polymer and/or ethylene/alpha-olefin copolymer, is blended with a matrix polymer which may be polypropylene homopolymer, as in the blend of EP '145. In view of the identity of film layer materials, examiner has reasonable basis to believe the multilayer film of EP '145 will possess bonding characteristics indistinguishable from those specified in claim 1 hereof. Under the circumstances, it is



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appropriate to shift the burden to applicants to show that the claims define a film which is neither the same as nor obvious over the film of the prior art. In re Best, 195 USPQ 430 (CCPA 1977).


13. No claims are allowed.

14. Any inquiry concerning this communication should be directed to Examiner F. M. Teskin whose telephone number is (703) 308-2456.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Schofer, can be reached on (703) 308-2452. The fax phone number for this group is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.

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